and several Western States, and repudiated in New York, Massachusetts, New Hampshire, and New Jersey.

NOTES—VALIDITY—CONSIDERATION PARTLY ILLEGAL.—DOUTHART v. CONGDON, 64 N. E. 348 (ILL.).—Where a city ordinance prohibited brokers from doing business without a license, notes given to the brokers in settlement of business transacted by them for the makers, including commission, were *held*, absolutely void, the partial illegality of consideration vitiating the whole.

Where two or more notes are given for an indebtedness, part of which was incurred for an illegal consideration, the law seems uncertain whether the total amount should be vitiated or not. *Carradine v. Wilson*, 61 Miss. 573, rules that any note larger than the illegal consideration may be applied thereto and recovery had on the others. When considerations can be separated, recovery may be had *pro tanto* as far as it is founded on a valid consideration. *Graves v. Safford*, 41 Ill. App. 659. The court here, however, has overlooked these distinctions and applied the well-established rule that where part of the consideration is illegal the whole is void as being inconsistent with law and public policy. *Scott v. Gillmore*, 3 Taunt. 226; *Perkins v. Cummings*, 68 Mass. 258.

NUISANCE—ACTION BY LESSEE—LANDLORD AND TENANT.—BLY v. EDISON ELECTRIC ILLUMINATING CO., 64 N. E. 645 (N. Y.).—A tenant in possession of premises injuriously affected by the operation of an electric lighting plant can sue to abate the same, though the lease was made during the existence of the nuisance. Parker, C. J., and Haight, J., *dissenting*.

This is the first departure of the New York courts from the doctrine of *Kernochan v. R. R. Co.*, 159 N. Y. 568. In that case it was held that a tenant, who renewed his lease during the existence of a nuisance caused by an elevated railroad, could not bring an action to abate the same, for he must be presumed to have accepted the lease at a lower rent. The court refuses to place that construction on this case because it was not intended to be applied to the general law of nuisances, but to a condition created by the operation of elevated railroads, which have no parallel in our jurisprudence. The rule of the *Kernochan* case has been applied in New York where the cause of the injury was a polluted stream *(Yoos v. Rochester*, 92 Hun. 481), and a tannery *(Frances v. Schoellkopf*, 53 N. Y. 152). Also in Massachusetts, where the injury was caused by an individual. *Baker v. Sanderson*, 3 Pick. 348. The principal case, however, is well considered, and the distinction appears to be just and proper.

PRINCIPAL AND SURETY—PAYMENT OF USURIOUS DEBT BY SURETY—ESTOPPEL OF PRINCIPAL.—BLAKELEY ET AL. v. ADAMS, 68 S. W. 473 (KY.). —*Held*, that a principal is not estopped to set up usury in the original debt, when sued by the surety on a contract for indemnity, unless he stood by and permitted the surety to pay the debt in ignorance of the fact that it contained usury. Paynter, Hobson and White, JJ., *dissenting*.

This decision seems unsupported by sound reason or authority. The universal rule is that the principal is estopped to plead usury against his surety, unless the surety was privy to the usury. *Maples v. Cox*, 74 Ga. 701; *Turman v. Looper*, 42 Ark. 500. So where one became surety in ignorance of usury in the debt, but paid with knowledge, he could recover of the principal the whole amount paid unless he paid contrary to principal's order.